

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

April 23, 1952
Op. No. 52-111

Mr. Myron Holbert
Assistant Superintendent
Public Instruction
State Capitol
Phoenix, Arizona

Dear Mr. Holbert:

In reference to your oral request for an opinion as to whether a public school district may be created at Fort Huachuca, an established military reservation, you are advised we do not think such a district may be established.

There is very little taxable property on the military reservation and the matter of providing funds for the district would create somewhat of a problem; however, this fact alone would not prevent the creation of the district. Hufford v. Herald, 179 N.W. 53 (Ia.)

The real difficulty in forming the district is one of jurisdiction. By Chapter 96, Session Laws of 1951, the State ceded civil and criminal jurisdiction over this area to the Federal Government.

Section 1 and 2 of said chapter reads:

"Section 1. The consent of the state of Arizona is hereby given in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, lease, condemnation, or otherwise, of any land

in this State required for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or for any other military installations of the government of the United States.

Sec. 2. Exclusive jurisdiction over any land in this State so acquired for any of the purposes aforesaid, and over any public domain land in this state, now or in the future reserved or used for military purposes, is hereby ceded to the United States; but the jurisdiction so ceded shall continue no longer than the said United States shall own or lease such acquired land, or shall continue to reserve or use such public domain land for military purposes."
(Emphasis supplied)

By Section 3 of the chapter the State retained jurisdiction on such areas for limited purposes. That is, the State only has the right to serve civil and criminal process on the reservation. All other matters are handled by Federal authorities. Under these conditions the State would not be authorized to enforce its school laws on the reservation. This being the case, we cannot see where the school authorities could create a district over which they had no control.

Our Supreme Court has not considered this question and we fail to find authorities from other jurisdictions directly in point.

The South Dakota Supreme Court, in the case of School Dist. No. 20 v. Steele, 195 N.W. 448, considered the effect of a statute almost identical with our Chapter 96 in connection with a tract of land acquired by the Federal Government for an Indian school and held that a child residing on the federally owned land was not a resident of the school district surrounding the federally owned land. In disposing of the case the Court said:

"The case of McMahon v. Polk, 10
S.D. 296, 73 N.W. 77, 47 L.R.A.
830, was an election contest.
Therein this court said:

'The vote of R. W. Wells, cast at
Sturgis precinct for appellant, was
rejected by the court as illegal and
void upon the ground that said Wells
was a nonresident of the precinct,
having his place of abode within
the military reservation of Ft. Meade;
and to this point our attention is
directed by the first assignment of
error. By the fifth subdivision of
section 18, art. 26, of the constitu-
tion, jurisdiction over the military
reservation of Ft. Meade is surren-
dered to the United States without
reservation other than the right to
serve legal process in certain cases;
and the question presented by the
record is whether a person in no way
connected with the army or navy may,
by long and continuous residence
within the boundaries of the reser-
vation thus ceded, acquire the right
to vote at an election held in the
county where the same is situated, pur-
suant to the law of the state. In his
Commentaries on the Constitution (Sec-
tion 1227), Judge Story, in treating
the eighth section of the first article
of the Constitution authorizing Congress
to exercise exclusive legislative power
over military reservations obtained by
the consent of the state in which the
same are situated, says: "The inhab-
itants of those places cease to be in-
habitants of the state, and can no
longer exercise any civil or political
rights under the laws of the state."
The doctrine resting upon and sustained
by an unruffled current of authority
seems to be that all political powers
and jurisdiction over a military reser-

vation, not expressly retained by the state, are surrendered absolutely to the general government by a voluntary transfer of lands for the exclusive use of the army or navy; and consequently a person residing thereon acquires none of the constitutional qualifications of an elector. In re Town of Highlands (Sup.) 22 N.Y. Supp. 137; Opinion of Judges, 1 Metc. (Mass.) 580; Sinks v. Reese, 19 Ohio St. 306; Com. v. Clary, 8 Mass. 72; McCrary, Elect. (4th Ed.) § 89. As the foregoing applies with equal force to the case of Charles D. Minard, a soldier stationed at Ft. Meade, the court very properly held his vote cast for appellant to be illegal and void. Residence upon the reservation from the date of his discharge to the time of re-enlistment did not make him a qualified elector.' "

We think this case throws some light on the problem we are now considering. Therefore, we are of the opinion that the district mentioned by you may not be formed under Arizona law.

Your second inquiry is: If the district cannot be formed, how can educational advantages be furnished the children residing on the reservation?

We assume the reservation is in unorganized territory and what we have to say is based upon that assumption. We think the County Superintendent of Schools could enter into an arrangement with Federal authorities to maintain a school in the nature of an accommodation school whereby the Federal authorities could furnish part of the funds for the school and the county could contribute to the fund out of apportionment money and the school reserve

Mr. Myron Holbert
State Capitol

April 23, 1952
Page five

fund. See Section 54-604, ACA 1939, and Section 54-608, ACA 1939, Supplement.

We trust this answers your question.

Yours truly,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

EA:mn